

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 98-0274 ST
STATE GROSS RETAIL TAX
For Years 1995 AND 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. State Gross Retail Tax – Imposition**

Authority: Information Bulletin #30; 45 IAC 2.2-3-20; 45 IAC 2.2-4-27; IC § 6-2.5-4-10; IC § 6-8.1-3-1

Taxpayer requesting reduction in assessment of sales and use tax.

STATEMENT OF FACTS

Taxpayer's Indiana business consisted of renting, leasing, selling or otherwise providing videos to individuals. Taxpayer collected sales tax on the rentals of these videos, but not on late fees charged for these videos. Additionally, the taxpayer purchased miscellaneous equipment and supplies during 1995 and 1996 where sales tax was not charged at the point of purchase. Taxpayer was assessed sales and use tax on these transactions and is protesting the amount of tax.

I. State Gross Retail Tax – Imposition**DISCUSSION**

Taxpayer was assessed state gross retail tax based on IC § 6-2.5-4-10. 45 IAC 2.2-4-27 states in relevant part, "In general, the gross receipts from renting or leasing tangible personal property are taxable." Information Bulletin #30 also states in relevant part, "Late fees assessed per day on the late return of entertainment products such as videos and video games are subject to sales tax." The auditor accordingly assessed the sales tax on these transactions.

45 IAC 2.2-3-20 states “All purchases of tangible personal property which are delivered to the purchaser for storage, use, or consumption in the state of Indiana are subject to the use tax.” Use tax was assessed on these miscellaneous purchases.

Taxpayer does not protest the validity of these assessments, rather taxpayer is protesting payment of the tax based on the amount of tax required and on the grounds that taxpayer was not aware of the existence of the tax on these transactions. Taxpayer’s confusion on the application of this tax extended to making incorrect payments of sales tax on some exempt transactions. Taxpayer has received credit for these payments and the Department declined to recommend an imposition of the negligence penalty.

IC § 6-8.1-3-1 states in relevant part, “The department has the primary responsibility for the administration, collection, and enforcement of the listed taxes.” In this instance, to reduce the assessment would be to reduce the statutorily required tax, which is beyond the authority of the Department. Consequently, the assessment cannot be reduced.

FINDINGS

Taxpayer’s protest is denied.